

BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.

ATTORNEYS AT LAW

RALEIGH, NORTH CAROLINA

MAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602

OFFICE ADDRESS
1600 WACHOVIA CAPITOL CENTER
150 FAYETTEVILLE STREET MALL
RALEIGH, N.C. 27601

TELEPHONE (919) 839-0300
FACSIMILE (919) 839-0304

WWW.BROOKSPIERCE.COM

HENRY E. FRYE
OF COUNSEL

J. LEE LLOYD
SPECIAL COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)
W.H. HOLDERNESS (1904-1965)
L.P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C.T. LEONARD, JR. (1929-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
G. NEIL DANIELS (1911-1997)
HUBERT HUMPHREY (1928-2003)

GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401

WASHINGTON OFFICE
601 PENNSYLVANIA AVENUE, N.W.
SUITE 900, SOUTH BUILDING
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

L.P. McLENDON, JR.
EDGAR B. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL MCGINN
MICHAEL D. MEEKER
WILLIAM G. MCNAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P.H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH RODENBOUGH IV
MARK J. PRAK
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVIDSON
JOHN W. ORMAND III
ROBERT J. KING III
V. RANDALL TINSLEY
S. KYLE WOOSLEY
FORREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JEAN C. BROOKS
JAMES C. ADAMS II
ALLISON M. GRIMM
ELIZABETH S. BREWINGTON
H. ARTHUR BOLICK II
J. EDWIN TURLINGTON
JOHN M. CROSS, JR.

JENNIFER K. VAN ZANT
DAVID W. SAR
BRIAN J. McMILLAN
NATALIE KAY SANDERS
DAVID KUSHNER
DEREK J. ALLEN
CLINTON R. PINYAN
TERESA DELOATCH BRYANT
COE W. RAMSEY
ROBERT W. SAUNDERS
ELIZABETH V. LAFOLLETTE
GINGER S. SHIELDS
JENNIFER T. HARROD
CHARLES E. COBLE
JOHN M. DEANGELIS
KATHRYN V. PURDOM
STEPHEN G. HARTZELL
JESSICA M. MARLIES
ANDREW J. HAILE
CHARLES F. MARSHALL III
J. BENJAMIN DAVIS
CAROLINE RITCHIE HEIL
KATHERINE A. MURPHY
SARA R. VIZITHUM
C. SCOTT MEYERS
JOHN S. BUFORD
NICOLE A. CRAWFORD
ALEXANDER ELKAN
C. ROBIN BRITT, JR.
PATRICK J. JOHNSON
KATHERINE J. CLAYTON
JENNIFER A. GALASSI
KATHLEEN A. GLEASON
JANICE L. KOPEC
SUSAN M. YOUNG
DARRELL A. FRUTH

November 29, 2005

Via Overnight Mail and ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Re: WDSU-DT, New Orleans, Louisiana
MB Docket No. 05-317
TELEVISION STATION SECTION 339(a)(2)(D)(vii) WAIVER REQUEST

Dear Ms. Dortch:

On behalf of New Orleans Hearst-Argyle Television, Inc. ("Hearst-Argyle"), permittee of Digital Television Station WDSU-DT, New Orleans, Louisiana, this letter requests a waiver to prohibit satellite subscribers from obtaining signal tests of WDSU-DT's digital signal pursuant to Section 339(a)(2)(D)(vii) of the Communications Act, as amended by the Satellite Home Viewer Extension and Reauthorization Act of 2004 ("SHVERA"). The instant request is filed pursuant to the procedures set forth in the Commission's Public Notice in DA 05-2979 (Nov. 17, 2005).

WDSU-DT is the NBC affiliate located in the New Orleans Designated Market Area ("DMA"). The New Orleans DMA is ranked 43rd among Nielsen Media's 210 television markets for the 2005-2006 television season. WDSU-DT has received a tentative digital channel designation

of Channel 43, which is WDSU-DT's allotted digital channel. *See* Public Notice, DA 05-2649 (Oct. 4, 2005). Accordingly, absent grant of the instant waiver request, effective April 30, 2006, satellite subscribers may request a signal test to demonstrate eligibility under SHVERA to receive a distant digital signal of a station affiliated with the same network as WDSU-DT.

Pursuant to Section 339(a)(2)(D)(viii) of the Act, Hearst-Argyle requests a waiver on two bases: (1) the station has experienced a "force majeure" event (**Section 339(a)(2)(D)(viii)(III)**), and, notwithstanding the force majeure event, (2) WDSU-DT would experience "a substantial decrease in its digital signal coverage due to necessity of using [a] side-mounted antenna" (**Section 339(a)(2)(D)(viii)(IV)**).

WDSU-DT is currently off the air due to damage sustained from Hurricane Katrina. The hurricane damaged several items of WDSU's NTSC and DTV transmitting equipment. While WDSU has only recently resumed NTSC operation pursuant to Special Temporary Authority, WDSU-DT is in the preliminary stages of its DTV restoration plans. On September 15, 2005, the Commission granted WDSU-DT authority to remain silent (File No. BLSTA-20050908ADQ) due to Hurricane Katrina.

Prior to the force majeure event of Hurricane Katrina, WDSU-DT's DTV facility was operated pursuant to Program Test Authority during the pendency of its DTV license application in FCC File Number BLCDDT-20050620ADP. As certified in its Form 381 filing (File No. BCERCT-20041105ABG), WDSU-DT intends to operate its post-transition DTV station based on its allotted replication facilities. WDSU-DT's authorized facility is for maximum permissible power at a lower HAAT with a side-mounted antenna. As previously explained to the Commission in WDSU-DT's request for waiver of the replication deadline filed on July 1, 2005, it is physically impossible for WDSU-DT to construct its DTV top-mount replication facility at its allotted height until the NTSC top-mount WDSU-TV antenna is removed at the end of the DTV transition.

Assuming WDSU-DT will be able to restore its DTV operation to its currently authorized facility, such operation would still result in a substantial decrease in its digital signal coverage area compared to its future replication facility. As previously submitted to the Commission, WDSU-DT's authorized facility is predicted to provide service to 1,686,068 people, while its future replication operation is predicted to provide service to 1,803,376 people. *See* Hearst-Argyle Supplement to Replication Waiver Request, Engineering Statement, MB Docket No. 03-15 (July 1, 2005).

Thus, absent grant of the instant waiver request to prevent signal testing under SHVERA, WDSU-DT is in jeopardy of losing service to all 1.8 million people who are predicted to receive service from the station but who may otherwise be eligible to receive service from a distant network affiliate, and, even when WDSU-DT resumes operation with its side-mounted antenna, WDSU-DT will still be in jeopardy of losing service to 117,308 people who may otherwise be eligible to receive service from a distant network affiliate.

Ms. Marlene H. Dortch
November 29, 2005
Page 3

Furthermore, were WDSU-DT to proceed with construction of its replication facility before the end of the DTV transition, Hearst-Argyle would have to expend considerable resources to move its NTSC antenna to a lower level on the tower to make room for its DTV antenna. These costs, which would include the cost of purchasing an NTSC side-mount antenna, installation, and reworking the transmission line, would be "sunk costs" in equipment and labor that will only be useful until the DTV transition is complete. In addition, completion of WDSU-DT's replication facility before the end of the DTV transition would require Hearst-Argyle to lower WDSU-TV's NTSC antenna, resulting in a loss of NTSC service to approximately 100,000 people. *See id.*

Accordingly, because WDSU-DT is currently off the air due to the force majeure event of Hurricane Katrina, because its authorize facility would experience a substantial decrease of 117,308 people in its digital signal coverage area due to the present side-mount installation of its DTV antenna, and because construction of its replication facility prior to the end of the DTV transition would result in a substantial loss of NTSC service, WDSU-DT satisfies two of the waiver criteria of Section 339(a)(2)(D)(viii) of the Act.

For the reasons stated herein, Hearst-Argyle requests a waiver to prohibit digital signal testing under SHVERA. If any questions should arise during the course of your consideration of this request, it is respectfully requested that you communicate with this office.

Sincerely,

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.



David Kushner
Coe W. Ramsey
*Counsel to New Orleans
Hearst-Argyle Television, Inc.*

cc: Via Hand-Delivery
Nazifa Sawez
Federal Communications Commission
Room 2-A726
445 12th Street, S.W.
Washington, DC 20554